IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

68-0157 (9-06) - 3091078 - EI

SKYLER R KIMM
Claimant

DUBUQUE STEEL PRODUCTS COMPANY
Employer

APPEAL NO. 15A-UI-04534-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/22/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Skyler Kimm (claimant) appealed a representative's April 7, 2015 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Dubuque Steel Products Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 21 2015. The claimant participated personally. The employer participated by Scot Geisler, Vice President. Exhibit D-1 is admitted into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 16, 2013 as a full-time sheet metal apprentice working from 7:00 a.m. to 3:30 p.m., Monday through Friday. The claimant signed for receipt of the employer's handbook on January 16, 2013. The handbook states an employee must report an absence by 8:00 a.m. The handbook does not indicate how many absences will be grounds for termination.

The claimant was absent for two weeks under his physician's orders when he had Influenza A and a chest infection. He provided a doctor's note to the employer. He was also absent for one week after he suffered a work-related injury and his physician would not allow him to work for that week. The claimant was not absent any other days. The employer remembers talking to the claimant about his absences on January 5, 2015 but the claimant has no recollection of the conversation. No warning was given. On February 17, 2015, the employer talked to the claimant about his absences. The employer remembers telling the claimant he could be terminated for future absences, but the claimant has no recollection of being warned.

On March 17, 2015, the claimant properly reported his absence due to personal reasons. The employer terminated the claimant on March 17, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

In this case all the claimant's absences were due to medical issues and properly reported, except for the final incident. The previous absences cannot be considered misconduct because they were not volitional. That leaves us with one properly reported absence for a personal reason. One absence is not excessive in two years. The employer did not provide evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 7, 2015 (reference 01) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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